

The Honorable John C. Coughenour

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Loan Trust 2006-4F Mortgage Pass-  
Through Certificate Series 2006-4F and  
Nationstar Mortgage LLC d/b/a "Mr.  
Cooper"*

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

GUIRGUIS, a.k.a. GEORGE, EL-SHAWARY,  
a Washington resident,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION as  
TRUSTEE FOR GSR MORTGAGE LOAN  
TRUST 2006-4F MORTGAGE PASS-  
THROUGH CERTIFICATE SERIES 2006-4F;  
NATIONSTAR MORTGAGE L.L.C d/b/a  
"MR. COOPER", a foreign company; and  
QUALITY LOAN SERVICE  
CORPORATION OF WASHINGTON solely  
as a nominal party and Trustee under RCW  
61.24.130 et seq.

Defendants.

Case No. 2:18-cv-01456-JCC

**REPLY SUPPORTING MOTION TO  
STRIKE PORTIONS OF SECOND  
AMENDED COMPLAINT [ECF NO. 62]**

1 Defendants U.S. Bank National Association, as Trustee for GSR Mortgage Loan Trust  
 2 2006-4F, Mortgage Pass-Through Certificates Series 2006-4F and Nationstar Mortgage LLC  
 3 d/b/a Mr. Cooper reply supporting their motion to strike portions of plaintiff Guirguis a/k/a  
 4 George El-Shawary's second amended complaint, ECF No. 62.

## 5 **I. INTRODUCTION**

6 Mr. El-Shawary concedes he took liberties in filing his second amended complaint,  
 7 adding "update[s]" to address events allegedly occurring after the court granted leave to amend.  
 8 He asks this court to overlook this flagrant violation of Rule 15 because his new allegations are  
 9 "not redundant," "not immaterial," "not impertinent" and "cannot reasonably be denied." The  
 10 court should reject his arguments. The court allowed Mr. El-Shawary to file his proposed  
 11 second amended complaint with updates to account for the order granting in part and denying  
 12 in part U.S. Bank and Nationstar's motion for judgment on the pleadings. It did not grant leave  
 13 to add any and all claims and allegations Mr. El-Shawary desired. The court should strike all  
 14 allegations beyond the scope of leave to amend.

## 15 **II. ARGUMENT**

16 Mr. El-Shawary asks this court to decline to strike his new allegations because they are  
 17 "not redundant," "not immaterial," and "not impertinent." (ECF No. 63 at 6-8.) He protests  
 18 these allegations are "not redundant" because they "do not repeat facts occurring prior to  
 19 February of 2020 when the proposed second amended complaint was filed." (*Id.* at 6.) He  
 20 claims they are "not immaterial" and "not impertinent" because they support his "additional  
 21 CPA claim" and "his claim . . . defendants' participation [in the recent FFA mediation] lacked  
 22 the statutorily required good faith[.]" (*See id.* at 7.) These arguments are red herrings. Mr. El-  
 23 Shawary never obtained leave to add allegations post-dating the proposed second complaint.  
 24 Nor did he obtain leave to file a new CPA claim, or assert any claims arising from the recent  
 25 FFA mediation.

26 Mr. El-Shawary's prejudice argument is equally meritless. (ECF No. 63 at 8-9.)  
 27 According to Mr. El-Shawary, the court should find his new allegations cannot cause prejudice  
 28 because they "are . . . within the ambit of Nationstar's personal knowledge" and "cannot

1 reasonably be denied." (*Id.* at 8-9.) This asks the court to disregard Rule 15's requirement  
 2 parties must seek leave to amend. It also overlooks the fact discovery has closed, the  
 3 dispositive motions deadline is weeks away, and Nationstar and U.S. Bank have had zero  
 4 opportunity to investigate Mr. El-Shawary's new allegations, including, for instance, his  
 5 demand "for a total compensation of over \$289,835.15" on his new CPA claim. (ECF No. 62-1  
 6 at ¶98.) Nationstar and U.S. Bank should not be subject to trial by ambush. The federal rules  
 7 do not allow it. *See e.g., Woods v. Int'l Harvester Co.*, 697 F.2d 635, 639 (5th Cir. 1983)  
 8 ("[T]rial by ambush is not contemplated by the Federal Rules of Civil Procedure.")

9 Mr. El-Shawary cites *Colaprico* for the proposition motions to strike "should not be  
 10 granted unless it is clear that the subject matter to be stricken could have no possible bearing on  
 11 the subject matter of the litigation." (ECF No. 63 at 6.) *Colaprico* is inapposite. There the  
 12 court did not address whether the plaintiff exceeded the scope of leave to amend. *See*  
 13 *Colaprico v. Sun Microsystems, Inc.*, 758 F. Supp. 1335, 1349 (N.D. Cal. 1991).

14 Mr. El-Shawary's argument *Bykov* "does not change the outcome here" because  
 15 "[c]ollateral estoppel was the reason the court granted the motion to strike" is incorrect as well.  
 16 (ECF No. 53 at 9.) In *Bykov*, the court "constrained Plaintiff's leave to amend his pleadings to  
 17 assertions that do not contradict judicially noticed records," which included "rulings pertaining  
 18 to Plaintiff's probation hearings and appeals." *Bykov v. Rosen*, No. C15-0713-JCC, 2017 WL  
 19 5756593, at 1 (W.D. Wash. Nov. 28, 2017). The court struck the portions of the second  
 20 amended complaint that were inconsistent with its order—*i.e.*, those the Ninth Circuit  
 21 previously found barred by collateral estoppel. *Id.* at \*2. It did not apply collateral estoppel to  
 22 strike certain allegations as Mr. El-Shawary claims. (ECF No. 53 at 9.) It instead struck the  
 23 "portions of the SAC that clearly and directly contradict [the court's] limitations as immaterial  
 24 and impertinent." *Bykov*, 2017 WL 5756593, at \*2.

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1 Finally, the court should strike the new allegations supporting Mr. El-Shawary's  
 2 FDCPA claim (*i.e.*, paragraph 117 of the SAC) despite Mr. El-Shawary's argument "the  
 3 adjustments made . . . conform[] with the Court's order[s]."<sup>1</sup> (ECF No. 63 at 5 n.1.) The court  
 4 dismissed this claim without prejudice then stated, "If plaintiff wishes to amend his complaint,  
 5 he may seek leave to amend[.]" (ECF No. 51 at 7.) Mr. El-Shawary did not seek leave to  
 6 amend after the court entered its order, he just added new allegations supporting his claim.  
 7 (ECF No. 62-1 at ¶117.)

### 8 **III. CONCLUSION**

9 Mr. El-Shawary admittedly filed a pleading exceeding the scope of leave to amend.  
 10 The court should strike the offending allegations, *i.e.*, paragraphs 36 to 53, 82 to 93 and 117  
 11 from the second amended complaint, ECF No. 54.

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 26 <sup>1</sup> U.S. Bank and Nationstar's motion incorrectly stated the SAC does not include the FDCPA  
 27 claim resolved by the order granting in part and denying in part their motion for judgment on  
 28 the pleadings. (ECF No. 62 at 3:23-24.) Mr. El-Shawary did re-file this claim. (*See* ECF No.  
 62-1 at ¶¶115-31.) Page 3, lines 23-24 of U.S. Bank and Nationstar's motion should instead  
 read: "The pleading does not include the RESPA and professional negligence claims resolved  
 by the motion for judgment on the pleadings . . . "

Respectfully submitted, this the 21st day of August, 2020.

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